

DEPARTMENT OF STATE REVENUE

REVENUE RULING # 97-02 IT

October 30, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Adjusted Gross Income Tax — Whether sales shipped to an LLC in a foreign country or another state are subject to the throwback rule.

STATEMENT OF FACTS

Corporation L is a corporation with operations in Indiana and several states in which Corporation L is registered and filing corporate income tax returns. Corporation L is part owner in LLC's which have nexus in a foreign country or another state. The LLC is treated as a partnership for federal and Indiana income tax purposes. The income or loss of the LLC is reflected as partnership income on Corporation L's federal and Indiana income tax returns. The foreign country or the other state does not recognize the partnership status of the LLC and treats it as a corporation for its tax purposes.

DISCUSSION

Indiana Code 6-3-2-2 (e)(2) provides that sales of tangible personal property are in this state if:

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States Government; or

(B) the taxpayer is not taxable in the state of the purchaser.

This rule is commonly referred to as the "throwback" rule.

Indiana Code 6-3-2-2(n) provides:

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

(1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

This section provides that if the taxpayer is taxable in the state that the tangible personal property is shipped to, the "throwback" rule does not apply.

Indiana Adjusted Gross Income Tax Regulation 45 IAC 3.1-1-153(b) provides that if the corporate partner's activities and the partnership's activities constitute a unitary business under established standards, disregarding ownership requirements, the proportionate share, based on the corporate partner's interest, of the partnership's property, payroll and sales factors flow up from the partnership to the corporate partner. Thus, a corporate partner that has a unitary business relationship with the partnership has nexus in the states or foreign countries in which the partnership conducts has nexus.

RULING

The Department rules that sales shipped from Indiana to a state or foreign country in which taxpayer is a corporate member of an LLC, which is treated as a partnership for federal income tax purposes, will not be subject to the "throwback" rule; providing Corporation L has a unitary relationship with the respective LLC.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.